

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

| | | |
|--|---|---------------------------|
| IN THE MATTER OF THE APPLICATION OF |) | |
| INTERNATIONAL AQUA FOODS USA, INC. FOR AN |) | FINDINGS OF FACT, |
| AQUACULTURE LEASE LOCATED NORTH OF |) | CONCLUSIONS OF LAW |
| ROGERS ISLAND, IN COBSCOOK BAY, LUBEC, |) | AND DECISION |
| WASHINGTON COUNTY, MAINE |) | |

On November 4, 2003 International Aqua Foods USA, Inc. of Eastport, Maine applied for an aquaculture lease totaling 32.14 acres in the coastal waters of the State of Maine, located north of Rogers Island in Cobscook Bay in Lubec, Washington County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating Atlantic salmon (*Salmo salar*) and Atlantic cod (*Gadus morhua*) using net pen culture techniques. The application was accepted as complete on April 5, 2004. A public hearing on this application was held on May 19, 2004 at 6:00 p.m., in Lubec.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site and that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the May 19, 2004 public hearing. At the public hearing, testimony was given by the applicant's representative Mark Kesselring, the Department's Aquaculture Environmental Coordinator, Jon Lewis, and two members of the public.

According to the application and the testimony by Mr. Kesselring, the proposed aquaculture lease is sought to raise Atlantic salmon and Atlantic cod. The applicant requested a lease site totaling 32.14 acres and a lease term of ten (10) years. Mr. Kesselring testified that the application proposes to consolidate two existing lease sites. The existing lease sites, SFML RN and SFML RS, are each 10 acres and contain a total of twenty 70-meter circular cages. The proposed consolidated site of 32.14 acres would encompass SFML RN and would contain ten 100-meter circular cages. The lease site SFML RS would be terminated. Mr. Kesselring testified that this application is part of a larger restructuring by the applicant that will result in fewer leases held and fewer acres leased by the applicant. Mr. Kesselring testified that if the reconfigured lease site is granted, the applicant would voluntarily terminate two other 10-acre aquaculture leases in Cobscook Bay, DESC GN1 and DESC GN2.

According to the application, smolts from one of the applicant's hatcheries would be placed on the lease site in accordance with Industry Bay Management Agreements, approximately every 24 months. Daily access to the site would be from the Lubec Marina. Currently, one trip per week is made from Eastport for feed delivery to the on-site feed storage scow. However, according to the application, the applicant intends to change feed practices on the lease site. Feed would be directly loaded onto feeding vessels at the Lubec facilities prior to the first daily departure, and therefore an on-site feed storage scow would no longer be required. According to the application, feed operations would be performed by blowers mounted on 2 lobster boat-type vessels instead of the current practice of using 2 small feed blowers mounted

on small scows. The feeding practices used by the applicant are intended to minimize food conversion ratios, feed usage and wasting of feed. According to the application, the applicant would maintain numerous records in order to maintain good fish health. Projected production at the proposed lease site would consist of stocking 300,000 fish on the site. The present number of fish stocked at SFML RS and SFML RN is 350,000, thus the lease activities at the proposed lease site would result in a slight decrease in fish produced in the lease area. According to the application, all power equipment used on the site, such as work boats, a work barge and feed blowers, would be equipped with mufflers. Any lights used on the proposed lease site, other than for navigation, would be subsurface husbandry lighting. Mr. Kesselring testified that the current lease activities do not result in an unreasonable impact from noise or light and that the proposed lease activities would be the same in terms of noise and light impacts.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental baseline of the proposed lease area. According to the baseline field survey submitted with the application, benthic sampling for infauna; sediment samples for granulometry; hydrographic measurements for current speed and direction; profiles of temperature, salinity, dissolved oxygen and depths; and an underwater video recording were performed at the proposed lease site. The fieldwork took place from July 18 – 30, 2003 and on September 13 and 27, 2003.

The diver survey and underwater video recording was performed along 60-meter dive transect lines either adjacent to or directly beneath the cages located on the current lease site, SFML RN. Flora and fauna observed in the recording include an abundance of sea stars and green crabs; a common occurrence of kelp, sea cucumbers, green sea urchins, burrowing anemone, sea scallops, rock crabs and mud shrimp; and a rare occurrence of mermaid's hair, rockweed, sea lettuce, blue mussels, frilled anemone, mysid shrimp and flounder. The current data collected over a 13-day period indicated a mean current velocity of 8.1 cm/sec and a maximum current velocity of 43.4 cm/sec. Profiles of temperature, salinity and dissolved oxygen were collected at the proposed site at depths ranging from 0.8 to 15.4 meters below surface.

The temperature ranged from 11.6-11.8°C; salinity was 32.3 ppt; and dissolved oxygen ranged from 96.5 – 97.7 % saturation. Mr. Kesselring testified that monitoring data from the existing lease site has demonstrated that aquaculture operations can occur in the proposed location without significant environmental impact, as no organic buildup has been noted under the present farm operations.

According to the application, the proposed lease site is not used by riparian owners for access. Mr. Kesselring testified that the present operations at the lease site have not led to any impairment of riparian access, and that the proposed lease site would not interfere with riparian access, as the nearest point of land is approximately 100 feet from the lease boundary. Thus, according to the applicant, ingress and egress of riparian owners would not be adversely affected. Mr. Kesselring also testified that the proposed lease activities would not interfere with navigation, as there is over 2,000 feet of navigable water between the site and Treats Island to the east. Additionally, he stated that the scope of the moorings and the cage placement on the proposed lease site should allow sufficient passage between Rogers Island and Major Island to the west.

According to the application, there is little to no recreational boating or commercial fishing activity in the area of the proposed lease. Mr. Kesselring testified that the proposed lease site is occasionally used for commercial fishing. However, he stated that the surrender of leases SFML RS, DESC GN1 and DESC GN2 would free those areas for commercial fishing, resulting in no net loss of viable fishing ground. The Cobscook Bay Fishermen's Association submitted a letter to the Department stating that the association supports the proposed lease consolidation.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on April 1, 2004. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC testified that the Department has video footage of the existing lease areas that was obtained under the Finfish Aquaculture Monitoring Program. Therefore, the video obtained during the April 1st site visit was taken in the expansion area of the proposed lease site. The AEC created a site report

summarizing the information obtained during the site visit and provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the proposed site is located between Major Island and Rogers Island, in water depths of approximately 48-49 feet at low water. The bottom topography of the proposed lease site consists of firm mud, sand and rocks with increasing depths to the north and east. Local fauna observed at the proposed lease site include an abundance of green sea urchins and sea scallops; a common occurrence of hermit crabs, common sea stars, barnacles and waved whelk; and an occasional spiny sun star, purple sun star, red-gilled nudibranch, cockle, and burrowing anemone. He testified that the existing Rogers Island lease sites have an abundance of green sea urchins. Very little vegetation was observed at the proposed lease site. According to the AEC's report, currents are tidally driven in a northwest/southeast direction. The AEC testified that the current lease operations are well run and have operated in a highly acceptable manner with no organic buildup. Additionally, according to the AEC, the water quality surrounding the two Rogers Island lease sites has been acceptable. The AEC testified that the applicant is required to obtain a Maine Pollutant Discharge Elimination System Permit from the Maine Department of Environmental Protection, which would require monitoring of future operations. Additionally, according to the AEC's report, the proposed lease area is not located within an Essential or Significant Habitat.

According to the AEC, no moorings, other than those associated with the existing lease operations, were observed in the proposed lease area during the site visit. The proposed lease site is located approximately 80-90 feet from the shore of Major Island and 60 feet from the shore of Rogers Island at low tide. Additionally, according to the AEC, the proposed activities will not interfere with navigation in the area. The proposed lease site is located to the west of deeper water that would be the primary navigation corridor in the area. According to the AEC, the two Rogers Island lease sites have operated in the same area and no complaints have been reported.

According to the AEC's report, no commercial or recreational fishing was observed within the boundaries of the proposed lease site during the site visit. However, according to the report, scallops and urchins were frequently observed during the site visit, as well as drag marks, indicating recent urchin or scallop dragging activity. The AEC testified that the scallops and urchins in the area of the proposed lease were of sub-legal size, indicating that the legal sized animals had been harvested. He stated, however, that the opening of SFML RS to dragging would make up for any lost fishing bottom in the proposed lease site. There are 8 aquaculture lease sites located within 1 nautical mile of the proposed site. The nearest lease site is located 2,002 feet north of the proposed lease site.

Lubec Selectman Bill Daye testified in support of the proposed aquaculture lease. He stated that the town board strongly supports the efforts of the applicant and supports the proposed changes to the operations. He also testified as a member of the Cobscook Bay Fishermen's Association. He stated that the association has no objections to the proposed lease and that they look at the proposed site as a nursery for urchins.

Jennifer Peters from the Sunrise County Economic Council, also provided testimony in support of the proposed aquaculture lease. She read a letter written by the Executive Director of the Council, which states that the Council supports the proposed lease, as the applicant is balancing the needs of its company with the capacity of Cobscook Bay.

Findings of Fact

The proposed aquaculture lease is the consolidation of two existing lease sites located north of Rogers Island in Cobscook Bay. The lease site is located approximately 80-90 feet from the shore of Major Island and 60 feet from the shore of Rogers Island at low tide, in water depths of approximately 48 feet at low water. There are no moorings located in the area of the proposed lease. There have been no reported problems with accessing the shore near the existing lease operations. Navigation in the immediate area of the lease occurs primarily in the deeper waters to the east of the lease site. There is 2,000 feet of navigable waters to the east of the proposed lease site. Thus, there is sufficient water surrounding the proposed lease site for vessel traffic.

Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

Fishing in the area of the proposed lease site consists of commercial fishing for urchins and scallops. Consolidation of lease sites SFML RN and SFML RS will result in the termination of SFML RS, thus opening that area to commercial fishing. The Cobscook Bay Fishermen's Association supports the applicant's proposed lease consolidation. There are 8 other aquaculture lease sites located within 1 nautical mile of the proposed site, and the nearest site is located 2,002 feet from the proposed site. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing fauna observed at the proposed site consists of green sea urchins, sea scallops, hermit crabs, common sea stars, barnacles, waved whelk, spiny sun star, purple sun star, red-gilled nudibranch, cockle, and burrowing anemone. The proposed lease site is not located within an Essential Wildlife Habitat. The mean current velocity at the proposed lease site is 8.1 cm/sec. and the maximum current velocity is 43.4 cm/sec. Currents are tidally driven in a northwest/southeast direction and, as demonstrated through the Finfish Aquaculture Monitoring Program, are of sufficient speed for flushing and dispersal of farm waste. The monitoring of the existing lease site has shown that the environmental conditions at the current lease site are acceptable. The projected production at the proposed lease site of 300,000 fish would be a slight decrease in fish produced in the lease area. Based on this evidence, I find that the proposed activities will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

All juvenile salmon and cod placed on the lease site will be obtained from the applicant's hatcheries located in Maine and New Brunswick. Based on this evidence, I find that there is an available source of Atlantic salmon and Atlantic cod.

The proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities. Based on this evidence, I find that the

proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

The power equipment used on the proposed site, such as work boats, a work barge and feed blowers, would be similar to those used on the current lease site and would be equipped with mufflers. Any lights used on the proposed lease site, other than for navigation, would be subsurface husbandry lighting. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of Atlantic salmon and Atlantic cod;
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities; and
7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 32.14 acres from the date of this decision for the purpose of cultivating Atlantic salmon (*Salmo salar*) and Atlantic cod (*Gadus morhua*) using net pen culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$25,000 conditioned upon their performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) Navigation and recreational boating and fishing shall be allowed in the open areas of the lease;
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- (3) prior to conducting any activity on the lease site, the leaseholder shall terminate aquaculture lease SFML RS; and
- (4) prior to conducting any activity on the lease site, the leaseholder shall obtain a Maine Pollutant Discharge Elimination System Permit from the Maine Department of Environmental Protection.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources